

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARDEN E. BUTLER and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Bensalem, PA

*Docket No. 02-606; Submitted on the Record;
Issued July 19, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether Office of Workers' Compensation Programs properly selected the impartial medical specialist based on the zip code of appellant's workstation.

The case is on appeal to the Board for the fourth time.¹ On the first appeal, the Board found that the Office erred in finding that appellant's request for reconsideration dated April 28, 1995, which was filed within a year of the Office's last merit decision dated May 6, 1994, was untimely and remanded the case for the Office to make an appropriate decision on appellant's request for reconsideration. In the second appeal, the Board found that there was a conflict in the medical evidence between the opinion of appellant's treating physician, Dr. S. Manzoor Abidi, a Board-certified psychiatrist and neurologist, and a second opinion physician, Dr. Richard A. Bennett, a Board-certified psychiatrist and neurologist, as to whether appellant continued to be disabled due to her April 13, 1990 employment injury and remanded the case for the Office to refer appellant to an impartial medical specialist to resolve the conflict. On the third appeal, the Board affirmed the Office's August 24, 2000 decision, finding that the opinion of the impartial medical specialist, Dr. Marcia L. Halpern, a Board-certified psychiatrist and neurologist, that appellant recovered from her April 13, 1990 employment injury and could return to work without limitations, constituted the weight of the evidence.

By letter dated October 30, 2001, appellant requested reconsideration of the Office's decision, contending that the Office erred in using the zip code of appellant's workstation in Philadelphia, Pennsylvania to select Dr. Halpern to be the impartial medical specialist rather than using the zip code where appellant lives, "08101," in Camden, New Jersey, to make the selection. Appellant contends that based on the "ABMS" Directory of Board Certified Medical Specialists, there were 11 physicians appropriately Board certified in Camden, New Jersey, and

¹ Docket No. 01-543 (issued October 25, 2001); Docket No. 98-1172 (issued January 31, 2000). Docket No. 95-2754 (issued December 17, 1997). The facts and history surrounding the prior appeals are set forth in the prior decisions and are hereby incorporated by reference.

there were 40 appropriate specialists in adjacent communities. She submitted a list of these doctors on a computer printout with the heading “ABMS Medical Specialists PLUS” dated October 30, 2001. Appellant contends that Dr. Halpern’s report should be stricken from the file and a new impartial medical examination scheduled with a physician from Camden, New Jersey, or an adjoining community such as Cherry Hill, New Jersey.

In a note dated December 3, 2001, the Office medical adviser stated that Dr. Halpern was properly selected through Physician’s Directory System (PDS). The Office medical adviser stated that, there were no neurologists listed under appellant’s zip code in Region III’s PDS as specialists in Pennsylvania, Delaware and West Virginia, were loaded by the national office. The Office medical adviser stated that since no specialist appeared for appellant’s zip code, PDS then “allows use of the zip [code], where employed or major city” and Dr. Halpern was selected by PDS.

By decision dated January 11, 2002, the Office denied appellant’s request for modification. In its decision, the Office noted that FECA Bulletin 00-01 provides for the selection of an impartial medical specialist to be made by entering the injured worker’s home zip code, which in appellant’s case would be Camden, New Jersey. The Office stated:

“[T]he Philadelphia [Office] PDS [Physician’s Directory System] is loaded only for Region III’s service area, namely Pennsylvania, West Virginia and Delaware. Workers whose jobs are located in Philadelphia but reside in New Jersey just across the Delaware river are serviced by the Philadelphia [Office]. In such cases, the Office uses the zip code of the injured workers’ duty station, which is within the allowable community distance of [appellant’s] home address.”

The Board finds that the Office properly selected the impartial medical specialist based on the zip code of appellant’s workstation in Philadelphia, Pennsylvania.

The Board has held that a physician selected by the Office to serve as an impartial medical specialist should be one wholly free to make a completely independent evaluation and judgment. In order to achieve this, the Office has developed specific procedures for the selection of impartial medical specialists designed to provide adequate safeguards against any possible appearance that the selected physician’s opinion was biased or prejudiced. These procedures, set forth in the Federal (FECA) Procedure Manual, provide, in pertinent part, as follows:

“b. *Selection of Physician.* The claims examiner may use Form CA-19, Request for Specialists Referral (Exhibit 1), to initiate the referral. Unlike selection of second opinion examining physicians, selection of referee physicians is made by a strict rotational system using appropriate medical directories.... The Physician’s Directory System (PDS) should be used for this purpose....”²

² *Albert Cremato*, 50 ECAB 550, 551 (1999); *Charles M. David*, 48 ECAB 543, 547-48 (1997); FECA Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4 (b) (March 1994).

FECA Bulletin No. 00-01, issued November 5, 1999, states that in selecting the impartial medical specialist:

“[T]he zip code used should normally be that of the employee’s home address, though the duty station may be used for good cause, for instance if the employee lives in a rural area and the duty station is located in an urban area with more physicians.”

The Bulletin states that other zip codes should not be used unless no physicians in the employee’s zip code practice the necessary specialty in which case PDS will select the closest neighboring zip code or the employee has requested an examination elsewhere as at a place she is staying away from home temporarily in which case the zip code of the temporary location may be used.

In this case, the Office used the zip code of appellant’s workstation in Philadelphia, Pennsylvania, rather than the zip code of her home address in Camden, New Jersey, because the PDS at the Philadelphia Office was set up only to list the appropriate physician in Pennsylvania, West Virginia and Delaware. As stated by the Office, the Philadelphia Office was the proper Office to handle appellant’s claim since she lives in Camden, New Jersey across the Delaware River. Therefore, the Office properly used the PDS at the Philadelphia Office in selecting Dr. Halpern as the impartial medical specialist and her opinion should not be disqualified. Dr. Halpern’s opinion that appellant was no longer disabled due to her April 3, 1990 employment injury constitutes the weight of the evidence. Appellant has failed to establish that the Office erred in selecting the impartial medical specialist.

The January 11, 2002 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 19, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member